IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1709 of 2002

to

SPECIAL CIVIL APPLICATION No 1728 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RUBAMIN PRIVATE LIMITED

Versus

CHIEF CONTROLLING REVENUE AUTHORITY

Appearance:

1. Special Civil Application No. 1709 of 2002
M/S.VYAS ASSOCIATES for Petitioner No. 1
MR A D OZA G.P. with MS NANDINI JOSHI A.G.P. for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 02/11/2004

ORAL JUDGEMENT

1. The petitioner herein has preferred these petitions in order to quash and set aside the orders dated 13/07/2001, passed by respondent no.2, Deputy Collector, and also the order dated 03/11/2001, passed by respondent no.1, Chief Controlling Revenue Authority.

2. The petitioner had purchased lands for the production of electricity by unconventional sources. Copies of the registered sale deeds have been annexed to the petitions. Notices under Section 32-A(1) of the Bombay Stamps Act, 1958, was issued by respondent no.2, Deputy Collector, to the petitioner intimating the valuation made in the document and the amount of stamp duty payable. Copies of the said Notices have been annexed to the petitions collectively. The petitioners submitted their reply to the said Notices.

3. By Notice dated 09/12/1999, the matter was kept for hearing on 01/01/2000. By order dated 13/07/2001, respondent no.2, Deputy Collector, directed the petitioner to pay the amount of stamp duty. Copies of the said orders have been annexed to the petitions. Feeling aggrieved by the aforesaid action of respondent no.2, Deputy Collector, the petitioner preferred Appeal under Section 32-B(1) of the Bombay Stamps Act, 1958, before respondent no.1, Chief Controlling Revenue Authority.

4. Respondent no.1 by order dated 03/11/2001 rejected the Appeal of the petitioner. Copies of the said rejection orders have been annexed to the petitions. Hence, these petitions.

5. Mr.Vyas for the petitioner has contended that the Appellate Authority i.e the Chief Controlling Revenue Authority, by order dated 03/11/2001, had rejected the appeal of the petitioner only on the ground that the petitioner had not deposited 25 per cent of the amount of difference of duty payable, before the filing of the said Appeal. He has submitted that the authority can entertain the Appeal, without depositing the aforesaid amount, if the authority is of the opinion that the deposit of the said amount will cause undue hardship to the person concerned. Therefore, the authority could have heard the petitioner, even though the said amount was not deposited by the petitioner.

6. Mr.Vyas for the petitioner has further contended that the matter was heard by the then Deputy Collector who was In-charge of the matter at the relevant point of time i.e. on 01/01/2000. The order in question was

passed by another Deputy Collector, respondent no.2 herein, who had not even heard the matter. Moreover, the petitioner was not heard by the new Deputy Collector, respondent no.2 herein, before the impugned order was passed. Thus, the averments made in para 8 of the petition are not controverted by the respondents.

7. Mr.Vyas for the petitioner has submitted that the amount which is to be deposited, i.e. 25 per cent of the difference of stamp duty payable, before the Appeal in question could be heard, comes to approximately Rs.48 Lacs. Therefore, the petitioner had requested for the waiving of the said deposit on the ground of hardship. However, without giving any opportunity of hearing and without considering the case of the petitioner and without deciding the said application for the waiver of the deposit, respondent no.1 herein, by a printed order dated 03/11/2001, at Annexure-G to the petition, rejected the Appeal of the petitioner.

8. Mr.A D Oza learned G.P. appearing with Ms.Nandini Joshi for the respondents has contended that the Appellate Authority was justified in not entertaining the Appeal in question, since the petitioners had not deposited the amount in question, i.e. 25 per cent of the amount of difference of duty payable.

9. I have heard learned counsel for the parties and perused the relevant documents on record. Having gone through the averments made in the petition, I am of the opinion that the Appellate Authority ought to have heard the petitioners, without insisting for the deposit of 25 per cent of the amount of difference of stamp duty payable, inasmuch as the Deputy Collector, respondent no.2 herein, who had passed the impugned order, had grossly violated the principle of natural justice. Moreover, the impugned order has been passed in a stereotype manner and in some of the orders, even the date of the order has not been mentioned.

10. The Appellate Authority ought to have considered the fact that the impugned order was passed by an Officer, i.e. respondent no.2 herein, who had not even heard the petitioner. Therefore, the order of respondent no.2, Deputy Collector, is required to be quashed and set aside and the matter is required to be remanded back to the Deputy Collector for decision afresh.

11. In above view of the matter, the order of the Appellate Authority, i.e. the Chief Controlling Revenue Authority, dated 03/11/2003 and the order of respondent

no.2, i.e. the Deputy Collector, dated 13/07/2001 are quashed and set aside. The matter is remanded back to the Deputy Collector, respondent no.2 herein, for decision in the matter afresh. Before any order is passed in the said proceedings, the respondent - Deputy Collector, shall hear the petitioner. The respondent Deputy Collector shall not be influenced by the fact that this Court has quashed its earlier order and the order of respondent no.1 herein and shall pass appropriate orders in accordance with law.

12. With the above observations and direction, these petitions stand partly allowed. Rule is made absolute to the above extent in all the petitions.

(K. S. Jhaveri, J.)

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